



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2015-0807; FRL-9941-94-Region 9]**

**Approval of California Air Plan Revisions, Department of Pesticide  
Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the California Department of Pesticide Regulations (CDPR) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from pesticides. We are proposing to approve these rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATE:** Any comments must arrive by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2015-0807 at <http://www.regulations.gov>, or via email to [Steckel.Andrew@epa.gov](mailto:Steckel.Andrew@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov.

For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Nancy Levin, EPA Region IX, (415) 972-3848, [levin.nancy@epa.gov](mailto:levin.nancy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to the EPA.

## Table of Contents

### I. The State's Submittal

#### A. What rules did the State submit?

- B. Are there other versions of these rules?
- C. What is the purpose of the submitted rules and rule revisions?

## II. The EPA's Evaluation and Action

- A. How is the EPA evaluating the rules?
- B. Do the rules meet the evaluation criteria?
- C. EPA recommendations to further improve the rules
- D. Public comment and proposed action

## III. Incorporation by reference

## IV. Statutory and Executive Order Reviews

### I. The State's Submittal

- A. *What rules did the State submit?*

This proposal addresses additions and amendments to Title 3 of the California Code of Regulations (3 CCR) made by CDPR Regulation 12-001 ("Nonfumigant Regulations"). Table 1 lists the new and amended regulations with the dates that they were adopted by the CDPR and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULES

Local Agency	Rule #	Rule Title	Adopted/ Amended	Submitted
CDPR	3 CCR 6452	Reduced VOC Emissions Field Fumigation Methods.	05/23/13	02/04/15

CDPR	3 CCR 6452.2	VOC Emission Limits.	05/23/13	02/04/15
CDPR	3 CCR 6558	Recommendations for Use of Nonfumigants in the San Joaquin Valley (SJV) Ozone Nonattainment Area (NAA).	05/23/13	02/04/15
CDPR	3 CCR 6577	Sales of Nonfumigants for Use in the SJV Ozone NAA.	05/23/13	02/04/15
CDPR	3 CCR 6864	Criteria for Identifying Pesticides as Toxic Air Contaminants.	05/23/13	02/04/15
CDPR	3 CCR 6880	Criteria to Designate Low-VOC or High-VOC Nonfumigant Pesticide Products.	05/23/13	02/04/15
CDPR	3 CCR 6881	Annual VOC Emissions Inventory Report.	05/23/13	02/04/15
CDPR	3 CCR 6883	Recommendation Requirements in the SJV Ozone NAA.	05/23/13	02/04/15
CDPR	3 CCR 6884	SJV Ozone NAA Use Prohibitions.	05/23/13	02/04/15
CDPR	3 CCR 6886	Dealer Responsibilities for the SJV Ozone NAA.	05/23/13	02/04/15

On August 4, 2015, the submittal for CDPR's Nonfumigant Regulations was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of these rules?*

There are no previous versions of 3 CCR 6558, 6577, 6864, 6880,

6883, 6884, or 6886 in the SIP. We approved earlier versions of 3 CCR 6452, 6452.2 and 6452.4 (now 6881) into the SIP on October 26, 2012 (77 FR 65294).

C. *What is the purpose of the submitted rules and rule revisions?*

VOCs help produce ground-level ozone, smog and PM, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. The overall purpose of the new and amended regulations is to regulate certain nonfumigant pesticide products applied to certain crops in the SJV ozone NAA when VOC emissions meet or exceed 95% of the 18.1 tons per day limit on VOC emissions, or 17.2 tons per day. CDPR added or revised the rules specified above largely to establish limits on the sale and use of high-VOC formulations of nonfumigant pesticide products that contain abamectin, chlorpyrifos, gibberellins, or oxyfluorfen as their primary active ingredient, for use on any of the following seven crops: alfalfa, almond, citrus, cotton, grape, pistachio, and walnut. These restrictions are only triggered when the VOC emissions meet or exceed 17.2 tons per day, as reported in the CDPR's Annual VOC Emissions Inventory Report. They apply only during the May-October "ozone season." Once high-VOC product prohibitions are in effect, they must remain in effect until the "hypothetical emissions" (i.e., the estimated VOC emissions if the prohibitions

were not in effect) for pesticides in the SJV ozone NAA comply with the 17.2 tons per day limit for at least two consecutive years. The rules include a calculation to determine the "hypothetical emissions." The rules also require pest control dealers to provide customers written information about these restrictions and to indicate on the invoice that the written information was provided. Pest control advisors are prohibited from recommending a restricted nonfumigant product, unless it qualifies under an exception.

The EPA's technical support document (TSD) has more information about these rules.

## **II. The EPA's Evaluation and Action**

### *A. How is the EPA evaluating the rules?*

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as moderate or above

(see CAA section 182(b)(2)). Because there are no relevant EPA CTG documents and because there are no major sources of VOCs for nonfumigant pesticides, nonfumigant pesticides are not subject to RACT requirements. However, nonfumigant pesticide use is subject to other VOC limits and requirements described in the TSD.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

B. *Do the rules meet the evaluation criteria?*

We believe these rules are consistent with CAA requirements and relevant guidance regarding enforceability, stringency, and SIP revisions. The TSD has more information on our evaluation.

C. *EPA recommendations to further improve the rules*

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules but are not currently the basis for rule disapproval.

#### E. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because we believe they fulfill all relevant requirements. We will accept comments from the public on this proposal until [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

#### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the CDPR rules as described in Table 1 of this notice. The EPA has made, and will continue to make, these documents available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR



52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation  
by reference, Intergovernmental relations, Ozone, Reporting and  
recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: January 14, 2016.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

[FR Doc. 2016-02314 Filed: 2/5/2016 8:45 am; Publication Date: 2/8/2016]